

Product Liability Defense Group ‘expands beyond just litigation’

By Brian Cox

Think of the Primerus Product Liability Defense Practice Group as a broad, welcoming tent where attorneys from a wide range of practices can find information on relevant common issues and can gather to make valuable connections. If you have a client with interests that touch upon the manufacturing sector, the Product Liability Defense Practice Group can help.

That’s how the executive committee wants Primerus members to see the group.

“Getting people to understand that this is not a narrowly focused group is one of our primary objectives,” says committee member Michele Barnes. “In my own practice, product liability expands beyond just litigation.”

Barnes sees a lot of overlap between the Product Liability Defense Practice Group and other practice areas. Some practice areas where there is overlap are obvious, such as transportation and insurance defense, but others may be less evident.

Barnes points to M&A as an example.

“If you’re acquiring a manufacturing company, you need someone to perform due diligence and identify the potential liabilities that are out there, whether they’ve been disclosed or not,” she says. “Not every client has insurance in place or maybe they need help overseeing litigation counsel. That’s definitely an area where we can really help other Primerus groups.”

Committee member Joe Wheeler echoes the sentiment.

“Our intent is to turn this group into a meaningful resource for everybody in Primerus,” says Wheeler, a partner at Cornelius & Collins, LLP in Nashville, Tenn.

The group’s leadership consists of veterans in product liability defense who bring extensive knowledge of the field to the table.

A partner at San Francisco-based Demler, Armstrong & Rowland, LLP, Barnes is a seasoned litigator. In recent years, her practice has expanded to incorporate the lessons learned in the courtroom to help clients proactively guard against future liabilities. She works primarily with manufacturers and suppliers evaluating risk management practices, reviewing marketing and use materials, and providing guidance on a variety of regulatory issues. She serves as National Coordinating Counsel for several clients overseeing tort litigation claims throughout the country.

Wheeler, too, has decades of experience in product liability as well as general automotive and accident litigation, professional liability, personal injury, governmental liability, and federal and civil rights actions.

The list of products he has defended claims against is wide-ranging: Automobiles, trucks, heavy lift equipment, cement mixers, automotive tools, presses, extrusion equipment, disposable butane lighters, seat belt equipment, airbags, fuel tanks, steering systems, plumbing equipment, electrical components, and clothing textiles. And that is only a sampling.

Gerald Swann, a partner at Ball, Ball, Matthews & Novak, P.A., has practiced in the areas of construction litigation, product liability, serious personal injury, and wrongful death for more than 32 years. The Montgomery, Ala. attorney has represented both commercial and residential contractors in disputes over construction quality and job site injuries. He has focused a large part of his practice on personal injury claims arising out of the use of products in both the private sector and industrial settings.

Barnes and Wheeler joined the committee earlier this year. Barnes says she saw it as an opportunity to give back and become more involved with Primerus. Wheeler wanted to help raise the profile of the group.

“I could see from being involved in some other Primerus events and the focus of those that there was a real need for a Product Liability Group presence and coordination among lawyers doing that sort of work,” says Wheeler.

The group has members located in 36 states, the District of Columbia, and three Canadian provinces. That reach can be a tremendous asset to both Primerus attorneys and clients.

“It’s important to have a good network of people who can either handle cases in other jurisdictions or who I can at least bounce ideas off of to have an understanding of what laws apply in other jurisdictions,” says Barnes.



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Wheeler says product liability clients – whether they be manufacturers, sellers, or distributors – want to know that the attorneys they are calling on are known quantities.

“There are so many things that involve less than an entire lawsuit. Sometimes a client just needs help dealing with a subpoena in a foreign jurisdiction or they need somebody to assist on a discovery matter,” says Wheeler. “We have a network of very capable attorneys that clients can be comfortable with handling the issue.”

“Startups or small businesses may need help with how to handle a product recall, warning labels, or warranties,” adds Barnes. “We handle all of the legal needs of the company for those products that are being put out into the market.”

The committee plans to organize either bi-monthly or quarterly calls that will offer attendees practical information such as trends in the types of litigation occurring; emerging plaintiff’s counsel targets; recent court decisions; and what courts are doing in terms of the admissibility of expert witnesses on new issues or new types of technology.

Barnes anticipates artificial intelligence to be a hot topic in future discussions. She says courts are currently grappling with how AI impacts the negligence strict liability analyses.

“Another purpose of these calls is to try to address wide-ranging topics that are going to be of interest to most of the lawyers in the group,” says Wheeler. “We want to put together features that also make introductions to experts who can be helpful to everyone.”

Examples of issues that share a commonality across a number of different types of cases include how to properly handle an accident scene or how to preserve evidence or chain of custody.

Clients, too, will find the Product Liability Defense Group a worthwhile investment of time, according to Wheeler.

“The group is a resource for clients to meet other lawyers and experts that they may need in a case somewhere,” says Wheeler. “It works both ways. I think we would have a lot to offer to clients and they have a lot to offer to us.”

The committee’s goal is to identify and present areas of interest and concern that have broad appeal and can be of value to attorneys across an array of practices.

Step one toward that objective is raising awareness of the group in order to increase participation in events. The committee hopes in the near future to organize cross-over segments as part of other practice groups’ events.

“We need to pair up with other groups and show people what we can do and how we can help where they may not even know they need help,” says Barnes.

